

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 232 of 1999****HONOURABLE MR.JUSTICE R.P.DHOLAKIA****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAFAJI TALAJI - Appellant(s)**Versus****STATE OF GUJARAT & 1 - Opponent(s)**

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Appearance :

THROUGH JAIL - MS BANNA S DUTTA for Appellant 1,
MR H.L. JANI, APP, for Opponent

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 The present appeal is directed against the judgement and order of conviction and sentence passed by learned Additional Sessions Judge, Banaskantha at Palanpur dated 9th October 1988 in Sessions Case No.82/1996 whereby the learned Judge has convicted the appellant for the offence under sections 302 of IPC and ordered to undergo rigorous imprisonment for life and fine of Rs.2000/-, in default, to undergo rigorous imprisonment for six months and convicted under section 135 of Bombay Police Act and ordered to undergo rigorous imprisonment for four months and fine of Rs.500/-, in default, to undergo rigorous imprisonment for 15 days. Both the sentences were ordered to run concurrently.

2.0 The prosecution case, in short, is as under:

2.1 The complainant Desalji Chaganji is elder brother of Madarji. The complainant Desalji is residing along with his three other brothers in the agricultural field in the sim of Gharpada village and Madarji was residing separately. Their house in the village had collapsed. The house of the accused is adjacent to the house of said Desalji and his brothers. There was some dispute about encroachment of land between Desalji and the accused. On 18th May 1996 at about three O' clock in the afternoon, complainant Desalji along with Madarji Chhaganji went to the village and were standing near the fence.

2.2 At about 4 O' clock Chanduji and the accused came to their house and scolded them as a result of which both the sides got enraged. The present appellant-accused went to his house and came out with a dhariya and he along with Chanduji Talaji attacked the complainant and Madarji. The present appellant attacked Madarji with dharia and inflicted injuries on his head. Madarji started bleeding and he shouted for help and the complainant tried to intervene. On hearing their shouts Parbatji Kumbaji and Shobhaji Chhaganji rushed there. The appellant thereupon escaped from the scene of offence with dhariya.

2.3 Injured Madarji was taken to the hospital for treatment. Desalji Chaganji went to Deesa Taluka Police Station and lodged the complaint. The complaint was registered as C.R. No. I-94/96 with the said police station for the alleged commission of offences punishable under sections 326, 504 and 114 of IPC and section 135 of the Bombay Police Act. During the course of treatment Madarji succumbed to the injuries in Civil Hospital, Ahmedabad on 24th May 1996 and therefore section 302 of IPC was added to the complaint.

2.4 On receipt of the complaint the police commenced investigation and Gulabsinh Amarsinh Parmar, PSI, (PW10-Exh.53) went to Deesa Hospital where the injured was initially admitted. When he reached there, he was told that the injured Madarji was referred to Palanpur Civil Hospital and therefore he sent a wireless message to Palanpur City Police to take dying declaration. Thereafter he went to the place of incident along with panchas, prepared panchnama of scene of offence, collected sample of earth covered with blood and sent for laboratory analysis. He has also recorded statements of various witnesses. On the same day the

appellant-accused was arrested. On 20.5.1996 the appellant-accused showed his willingness to show the muddamal weapon. Therefore he was taken in a police van and the appellant-accused asked them to go to his house and upon reaching there he showed the muddamal weapon from the backyard of his house. Necessary panchnama was prepared and the muddamal weapon was taken into custody. On receipt of postmortem report and FSL report and on completion of investigation the investigating agency submitted chargesheet in the court of learned Judicial Magistrate, First Class, Deesa. Since the case was exclusively triable by the Court of Sessions, learned Judicial Magistrate, First Class, Deesa committed the case to Court of Sessions, Banaskantha at Palanpur.

2.5 The present appellant-accused and the other accused Chanduji Talaji had pleaded not guilty. Therefore the Sessions Court proceeded to conduct the trial.

3.0 In order to support the case the prosecution has examined Dr. Natvarbhai Prabhudas Patel at Exh.9 who has performed the postmortem of the dead body, Dr. Punmaji Hakmaji (PW2-Exh.12) who has initially treated the deceased, Desalji Chhaganji (PW-3

Exh.24), brother of deceased Madarji, Parvatji Kumbhaji (PW4-Exh.27), who has rushed to the scene of offence on hearing the shouts, Babuji Galaji (PW5-Exh.30) who has also rushed the scene of offence on hearing shouts, Parvatji Khanopji (PW6-Exh.31) who is panch witness of discovery panchnama, Ankurbhai Manharlal Meghwal, Clerk in the office of Magistrate (PW7-Exh.38), Udaybhai Kirtilal (PW-8Exh.40) who is Circle Inspector, Shri Digant Kalidas Dixit (PW9-Exh.49), who is the Medical Officer, Civil Hospital, Ahmedabad and Gulabsinh Amarsinh Parmar (PW10-Exh.53) who is PSI, Palanpur.

3.1 The prosecution has produced the following documents on record:

1. Complaint of Deshalji Chhaganji Thakore.
2. Forwarding letter
3. Panchnama of scene of offence
4. Copy of Station dairy note No.16
5. Discovery panchanama
6. Panchnama of body of the deceased.
7. Copy of Station Dairy No.9.
8. Report of Head Constable posted in Civil Hospital.
9. Copy of note in respect of death of Madarji Chhaganji.
10. Note for conducting postmortem note.
11. Yadi for inquest panchnama.
12. Inquest panchnama.
13. Receipt in respect of sending the dead body.
14. Report for taking dying declaration.

15. Report sent for taking dying declaration.
16. Ravangi Note
17. Receipt in respect of receipt of Muddamal.
18. Certificate in respect of cause of death.
19. Postmortem note.
20. Certificate of Medical Officer, Govt. Hospital.
21. Forwarding note of FSL.
22. FSL Report
23. Report of serological analysis
24. Copy of notification of District Magistrate.

3.2 After recording the submission of the closing pursis and recording statement under section 313 of CrPC the Sessions Court has convicted the appellant and Chanduji Talaji as stated hereinabove against which the present appeal has been filed. In the meanwhile, the co-accused Chanduji Talaji has expired. Therefore the appeal qua Chanduji Talaji has become abated. The present appeal is heard qua Mafaji Talaji Thakor, the present appellant.

4.0 Ms Banna Dutta, learned Advocate appearing for the appellant submitted that the case is based solely on the eye witness who is related to the deceased and he is an interested witness and therefore the conviction cannot be based on such evidence. She submitted that except the one eye witness there are no other evidence to convict the appellant and therefore the Sessions Court has committed an error in convicting the appellant.

5.0 Mr. H.L. Jani, learned Advocate appearing for the respondent has supported the judgement and order of conviction and sentence and submitted that looking to the evidence on record the prosecution has clearly established the case against the appellant and no interference is warranted in this appeal. He submitted that looking to the injuries sustained by the deceased on his vital part of the body and discovery panchnama and evidence of the witnesses the prosecution has established the case against the appellant beyond doubt. He, therefore, submitted that the appeal deserves to be dismissed.

6.0 The prosecution has examined Desalji Chaganji (PW3) at Exh-24, who was present at the time of the incident. In his deposition he has deposed that the appellant is residing near the plot of the deponent and his brothers and that he knew the appellant. He deposed that the incident in question had taken place on 18.5.1996 at 4 O' clock in the evening. He along with Madarji had gone to their plot and were standing there. At that time the appellant came there and scolded the deponent and his brother telling that they are encroaching upon the land. He further deposed that the appellant

got enraged, went into his house, came back with a dharia. The appellant and Chanduji started abusing and when the deponent told not to abuse them the appellant assaulted Madarji and inflicted injuries on back side of his head as a result of which Madarji fell down. The deponent shouted and on hearing shouts Parbatji and Shobhaji rushed there. The appellant had run away from the scene of offence along with Dharia. This deponent informed Parbatji and Shobhaji about the incident in question. Madarji was bleeding profusely and he was taken to the hospital and thereafter he lodged the complaint with Deesa Rural Police Station.

7.0 This witness was thoroughly cross-examined by the Advocate for the appellant, but nothing incriminating has come out to falsify the deposition of this witness. Deposition of this witness clearly shows that the appellant had gone into the house, came out with dhariya and assaulted Madarji. The presence of this witness at the place of the incidence cannot be doubted inasmuch as they were standing near their plot and the appellant is the neighbour. Apart from that Parbatji and Shobhaji rushed there on hearing his shouts and he had informed them about the incident and the said Parbatji and Shobhaji had also supported the version of this witness.

8.0 Parbatji Kumbaji (PW 4) was examined at Exh.27. He deposed that on the day of the incident at about 4 O' clock in the evening, on hearing shouts of Desalji Chhaganji (PW3) he rushed there and upon reaching the scene of offence he saw that Madarji was lying on the floor and he was in a bad condition. He deposed that Desalji and Shobhaji were standing near him. Madarji was injured on his head and he was bleeding. He has also seen that the appellant and Chanduji running away from the scene of offence and this witness inquired from Desaji as to what happened and he was told the entire story. He deposed that thereafter Madarji was taken to hospital and Desalji went for lodging complaint. This witness was also cross-examined but nothing could shake the deposition of this witness. The deposition of this witness clearly supports the evidence of Desalji Chhaganji (PW3). Therefore the evidence of this witness is trustworthy and cannot be discarded on any count.

9.0 One Dargaji Meruji Thakor and Parbatji Anopji Thakor, who are panch witnesses of the discovery panchnama have been examined at exh.32. They have stated that the appellant has shown the muddamal dharia behind his house in their presence and they have fully supported the discovery panchnama. It is required to be

noted that the appellant had shown his willingness to show the muddmal weapon and the police along with panchas and appellant went to the place as instructed by appellant and found out the dharia. The fact that the muddamal weapon was kept at a place where others could not find it itself would show that the appellant has kept the dharia at that place after the alleged commission of offence. Deposition of these panchas are fully supported by the deposition of Gulabsinh Amarsinh Parmar (PW 10-Exh.53) who has also narrated the incident and how the muddamal weapon was taken into custody.

10.0 Digant Kalidas Dixit (PW-9) was examined at Exh.49. He was medical officer at Civil Hospital, Ahmedabad on 18.5.1996. He deposed that on 18.6.1996 at about 4 am the injured was brought there and on inquiry he was informed that he was injured with dhariya and this witness has also explained the injuries sustained by Madarji.

11.0 According to the postmortem note the cause of death is head injury and the injuries were antimortem. The prosecution has examined Dr. Natvarbhai Prabhudas Patel (PW1) at Exh.9. He has

carried out the postmortem of the dead body. He has fully supported the postmortem note. He deposed that the injuries caused are sufficient to cause death and the injuries were caused by hard and blunt substance and he has also deposed that the injuries were possible by dharia. Thus, the postmortem note coupled with the deposition of the doctor who conducted the postmortem shows that the injuries were on the vital part of the body and such injuries are sufficient to cause death in an unnatural way and therefore it is a homicidal death. Though Dr. Natvarbhai was cross examined, the evidence of this witness was not shaken at all.

12.0 Thus, on an overall evidence it is established on record that Desalji Chhaganji (PW3) and Madarji had gone to their place on the day of the incident, the appellant and Chanduji Talaji were standing there, they scolded Desalji and Madarji, the appellant-accused went inside his house and came out with dharia and then assaulted Madarji and inflicted injuries with dharia on the back of his head, Desalji intervened and Madarji fell down. On hearing shouts Dargaji and Parbatji reached the spot who were told about the incident, and Madarji was removed to the hospital. Desalji's

version was fully supported by Parbatji and Dargaji and it was proved that the appellant had inflicted injuries on the head of Madarji with dharia. Thereafter the appellant himself has shown willingness to show the muddamal dharia and the same was found from the backyard of the house of the appellant-accused. Therefore, it is clear that after the offence the appellant has kept the dharia at that place. The postmortem report shows that the death was caused due to head injury. The doctor who performed the postmortem also suggested that such injuries were sufficient to cause unnatural death and that the injuries are possible by hard and blunt substance like dharia. Looking to the overall evidence on record, we have no doubt that the Sessions Court has established that the appellant has assaulted Madarji as a result of which he suffered head injuries and subsequently he succumbed to those injuries. Looking to the injuries, it is evident that the appellant has inflicted the injuries on the vital part of the body with an intention to cause death of the victim. Therefore, we have no hesitation in accepting the case of the prosecution.

13.0 A contention has been raised stating that Desalji Chhaganji (PW3) is a relative of the deceased and therefore his evidence

cannot be based for imposing conviction on the appellant. It is required to be noted that his presence at the scene of offence is natural and in fact he and his brother Madarji had gone to the said place as they have a plot of land there. There are no independent witnesses present at the time of the incident. It is also required to be noted that the evidence of Deslaji has been fully corroborated by the deposition of Parbatji Kumbaji (PW4) who had reached the place of incident on hearing the shouts of Desalji and Desalji had told him about the incident and there are no contradictions in both of their evidence. We, therefore accept their evidence in absence of any contradiction in their depositions. Further, the postmortem note shows the head injuries as stated by this eye witness Desalji which are possible in ordinary course by dharia which is recovered at the instance of the appellant and it is a homicidal death. It is required to be noted that all other evidence on record clearly supports the evidence of Desalji and in such situation, when there are no other independent witnesses available, the Court is at liberty to look upon the evidence of this sole witness. Looking to the facts and circumstances of the case it cannot be said that Desalji (PW3) is an interested witness and therefore his evidence can be accepted when other evidence clearly supported the case of

prosecution.

12.0 On an evaluation of the entire evidence appearing on record, we are of the opinion that the prosecution was able to prove the case against the appellant-accused. We are, therefore, in complete agreement with the judgement and order of conviction and sentence passed by the Additional Sessions Judge, Banaskantha at Palanpur, which does not call for any interference. In the result, the appeal deserves to be dismissed and is accordingly dismissed. The appellant Mafaji Talaji Thakor of Criminal Appeal No.232 of 1999 is on bail and hence, his bail bond shall stand cancelled. He is directed to surrender before the Jail Authorities within a period of two months from today.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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